



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
October 28, 1994

IN REPLY PLEASE
REFER TO OUR FILE

DOCKET FILE COPY ORIGINAL

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Via UPS

Re: In the Matter of Policies and Rules
Implementing the Telephone Disclosure
and Dispute Resolution Act
CC Docket No. 93-22

Dear Secretary Caton:

Enclosed please find an original and four (4) copies of the Reply Comments of the Pennsylvania Public Utility Commission, the Pennsylvania Telephone Association, the Pennsylvania Office of Consumer Advocate and the Central Atlantic Payphone Association ("Commenters") in the above-captioned matter.

Sincerely,

Maureen A. Scott
Assistant Counsel

MAS/ms
Enclosure

No. of Copies rec'd 024
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Policies and Rules Implementing	:	
the Telephone Disclosure and	:	CC Docket No. 93-22
Dispute Resolution Act	:	

REPLY COMMENTS OF THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION, THE
PENNSYLVANIA TELEPHONE ASSOCIATION,
THE PENNSYLVANIA OFFICE OF CONSUMER
ADVOCATE AND THE CENTRAL ATLANTIC
PAYPHONE ASSOCIATION

The Pennsylvania Public Utility Commission (PaPUC), the Pennsylvania Telephone Association (PTA), the Pennsylvania Office of Consumer Advocate (OCA) and the Central Atlantic Payphone Association (CAPA) (jointly referred to as the Pennsylvania Commenters) submit the following joint reply comments to the Further Notice of Proposed Rulemaking (FNOPR), adopted August 2, 1994 and the proposed rules contained in Appendix C to the FNOPR order.¹ The Pennsylvania Commenters, along with over 30 other interested parties filed initial comments addressing the FNOPR and the important subject matter to which it pertains.

¹ CAPA is an industry trade organization which consists of a majority of the independent pay telephone providers presently operating in Pennsylvania. CAPA did not join in the initial comments submitted by the Pennsylvania Commenters since the issues addressed in those comments did not relate to pay telephones. However, these reply comments do address information service issues relating to pay telephones and accordingly, CAPA joins in these comments as they relate to pay telephone issues.

A. Background

In its initial comments, the Pennsylvania Commenters praised the Commission for reopening this important docket which seeks comments on "proposals intended to protect telephone subscribers from abusive practices associated with the provision of information services through 800 numbers and pursuant to a presubscription or comparable arrangement." Although the Pennsylvania Commenters supported the Commission's proposed modifications to its regulations as contained in Appendix C to the FNOPR, it urged the Commission to go further and implement additional consumer protections through including a prohibition against local exchange carrier (LEC) billing of charges for calls placed pursuant to a presubscription or comparable arrangement (POCA) in the POCA definition. Alternatively, although less effective, the Pennsylvania Commenters recommended that the Commission directly require the charges for POCA calls billed through the LEC to be transmitted to the LEC along with an information service record indicator like a 900 code.²

Several commenters, like the American Public Communications Council (APCC) and the National Association of Consumer Agency Administrators (NACAA), support our proposal, or a variation thereof, intended to restrict or prohibit LEC billing as a necessary consumer protection applicable to POCA information

² The Pennsylvania Commenters also requested that the Commission clarify that all information services (with the exception of directory and tariffed services), including calls placed or terminated for billing purposes through an ordinary geographic area code (OGAC) number, be provided under a POCA.

service calls. At the same time, the Pennsylvania Commenters are aware of no commenter which raised specific legal or practical objections to restrictions or prohibitions on LEC billing of POCA calls. Accordingly, the Pennsylvania Commenters will not repeat arguments made in its initial comments on these issues, but will center its reply comments on new issues raised in the comments of other interested parties. However, the Pennsylvania Commenters renew their support and reemphasize the necessity of restrictions or prohibitions on LEC billing as crucial consumer protection for information service users.

B. Replies to the Comments of Other Interested Parties

1. The Commission Should Close Future Loopholes
Associated with other Statutory Exemptions
Before Their Use by IPs Becomes Widespread

In its initial comments, the Pennsylvania Commenters addressed an apparent trend in the provision of information services whereby calls were being placed or terminated for billing purposes through OGAC numbers. It appeared to us that this practice was designed by information service providers (IPs) to avoid LEC identification of the charge as an information service charge for billing separation purposes and, through misinterpretation of the Commission's rules, avoid POCA requirements. Essentially, the use of OGAC numbers for information service calls were intended to first create and then take advantage of a loophole in the Commission's present rules. Our initial comments requested the Commission to take steps to close this loophole.

However, the initial comments submitted to the Commission by Southwestern Bell Telephone Company (SWBT) identify a different trend and a potential future loophole, which although not yet identified as a common practice in Pennsylvania, could be extremely damaging to attempts to resolve the information service problem. On page 10 of its comments, SWBT identifies a practice whereby IP services are provided by interexchange carriers (IXCs) which include the charges for information services in message toll rates tariffed and filed with the Commission. Since the Commission does not generally control non-dominant carrier tariff rates, the IXC can include information service charges in the message toll tariff rate without restriction, e.g., message toll rate of \$3.99 per minute. Through advertising, the IXC and the IPs which utilize the IXC solicit consumers to access the IXC's services through 10XXX dialing. Of course, the consumer is charged the IXC tariff rate of, for example, \$3.99 per minute, the same rate charged for the same information service or similar information service through 900 or POCA access.

The glaring nature of the consumer problems caused by this practice is overwhelming. The Telephone Disclosure and Dispute Resolution Act (TDDRA) provides three specific exceptions to the definition of pay-per-call services: 1) directory services, 2) tariffed services and 3) services provided after entering into a POCA with a potential consumer. See 47 U.S.C. §228(i)(2). The Commission has devoted virtually all of its attention to assuring adequate consumer protections applicable to the POCA exemption. To

date, the Commission has not addressed or implemented consumer protections applicable to information services provided as a tariffed service.

Accordingly, as the Commission implements effective regulatory controls for POCA calls, IPs can be expected to move the provision of information services away from the POCA exemption into the tariffed services exemption. Since there are no regulatory controls presently applicable to information services provided under tariff, a gaping loophole is created whereby IPs can provide any type of information service to consumers without entering into a POCA or complying with any other restriction or consumer protection.

Under this scenario, Commission attempts to solve the information services problem will again be frustrated. Unwitting consumers, including minors and/or individuals with mental or physical disabilities, will continue to fall prey to unscrupulous IP business practices. Consumers who do not timely pay tariffed information service charges will continue to have essential, local and long distance services terminated without recourse. The Commission and state regulators will continue to be bombarded by consumer complaints.

The Pennsylvania Commenters join SWBT in urging the Commission to address and close the tariffed services loophole now before it becomes the next prevalent form of IP abuse. The Commission has more than adequate authority to close this loophole since information services provided under the tariffed services exemption

are provided by IXC common carriers, entities, unlike IPs, which are fully within the Commission's regulatory authority.

While the Pennsylvania Commenters commend SWBT for identifying and bringing to the Commission's attention the next information services loophole, we recommend that the situation be addressed in a different manner than that proposed by SWBT in its initial comments (SWBT, pp. 12-14).³ While we do not oppose the SWBT proposal, the Pennsylvania Commenters recommend two alternative approaches to addressing this situation.

Under the first approach, consistent with the approach to POCA calls taken in our initial comments, we urge the Commission to prohibit charges for tariffed information services from being billed to consumers through the LEC. Such an approach clearly falls within the Commission's broad regulatory authority over common carriers, including IXCs which include charges for information services in tariffed message toll rates.

Like its application to POCA calls, this approach provides far-reaching consumer protections. Tariffed information services would not be mixed on the LEC bill with legitimate message toll traffic. Consumers would not be subject to termination of essential local and long distance services for non-payment of tariffed information services. Directly billed by IXCs or their billing subcontractors, consumers will be in a far better position to dispute charges (particularly if services were provided to

³ Under the SWBT proposal, all information services including those provided as tariffed services would be required to be provided under a POCA.

minors and/or individuals with physical or mental disabilities) and determine the appropriate personal payment priority for those charges.

In their comments, Pilgrim Telephone, Inc. and Infodial, although not addressing this proposal, oppose any restrictions on the provision of tariffed services, whether or not the tariffed services include information services. They oppose any restrictions on the basis that any requirements would apply to services which are not deserving of such restrictions, e.g., 1-800-COLLECT, 1-800-OPERATOR, local weather or time recording services, movie theater recordings, language line services, time message services and dial- in modem lines. By grouping their services together with traditional carrier service offerings, Pilgrim and Infodial attempt to assure that the Commission does not impose any restrictions on their less deserving tariffed information services.

Moreover, review of the services identified by these interested parties reveals that the services identified fall into one of the following categories: access services to non-information services, directory services falling under a separate TDDRA exemption, information services for which there is no charge or services which have never traditionally been billed through LEC bills. None of these service categories would be affected by a prohibition against LEC billing of tariffed information services. Furthermore, to the extent the Commission is sensitive to billing restrictions on certain specific types of tariffed information services, the Pennsylvania Commenters urge the Commission to

expressly exempt these specific services from billing restriction application.

The second possible approach is for the Commission to become actively involved in review of rate levels in non-dominant carrier tariffs to assure that rate levels for message toll services do not include compensation for information services. Although potentially effective, this approach does not yield the comprehensive consumer protections provided by the billing restrictions approach described above. Furthermore, this approach is burdensome to the Commission and involves tariff review which the Commission has not been actively involved with in the past.⁴

Overall, the Pennsylvania Commenters strongly urge the Commission to take comprehensive steps to address the tariffed service exemption. Furthermore, the Pennsylvania Commenters will continue to explore ways to address this issue at the state level.

2. Commission Resolution of the Domestic Tariffed Services Situation Will Also Generally Provide Consumer Protections for International Information Services

The Commission also expressly recognized in its FNOPR order that international information service calls are a quickly growing regulatory problem (FNOPR, p. 13, f. 36). The regulatory problem is particularly challenging because more times than not

⁴ However, the Commission could structure such tariff review in a less burdensome manner by merely suspending the IXC's tariff once a complaint related to the provision of information services is received. In this situation, the burden should be placed on the IXC to demonstrate why its rates should not be reduced to an appropriate level.

international information service calls are priced at tariff rates and fall within the tariff services exemption in the TDDRA. In our initial comments, the Pennsylvania Commenters did not provide a definitive proposal for the Commission's consideration but instead committed to attempting to develop a recommendation for Commission consideration from review of the comments of other interested parties.

Following the lead of SWBT, the Pennsylvania Commenters now propose that the Commission address the international tariffed information call situation in the same manner that the Commission chooses to address the domestic tariffed information call situation addressed previously (SWBT p. 10). Again, the Pennsylvania Commenters recommend that the most effective consumer protection is for the Commission to exercise its authority over common carriers to prohibit IXCs from billing charges for international tariffed information services through LECs.⁵

⁵ The Pennsylvania Commenters disagree with SWBT that consumer protections applicable to tariffed information services should apply only to calls transmitted by an IXC other than the customer's presubscribed carrier. The Pennsylvania Commenters have encountered instances through customer complaint where international tariffed information services were provided through the presubscribed carrier. One instance involved calls made by a child with a mental disability who amassed over \$1,000 in charges. According to information provided by presubscription carriers, IPs can share in the profits from these tariffed services through arrangements between IPs and foreign governments which have a financial interest in increasing incoming and outgoing call volumes to their respective countries. It also appears that although these calls are terminated in a foreign country for billing purposes, the calls are typically call-forwarded back to the U.S. for the actual provision of service.

3. The Commission Should Require IPs or their Billing Agents to Purchase Incoming Screening Services to Prevent the Provision of Information Services to Pay Telephones

A situation has recently come to the attention of the Pennsylvania Commenters, including CAPA, relating to the provision of information services to payphones. Unlike the other issues described herein, we have a common interest with IPs to prevent this situation from occurring. For Pennsylvania LECs and independent payphone owners, this situation causes unneeded administrative problems related to identifying and returning information service charges improperly accepted at and billed to pay telephones. For IPs, the provision of service to payphones creates large uncollectibles, since the actual users cannot be identified and since LECs and independent payphone providers will refuse to pay the charges.⁶

To address this growing problem, the Pennsylvania Commenters recommend that an additional element be added to the definition of "presubscription or comparable arrangement" to require IPs and/or their billing agents to purchase and utilize incoming screening services. Utilization of these services will typically permit access to LEC Line Information Databases (LIDB) which will allow

⁶ If an IP or its billing agent initially allows a customer to access information services from a pay telephone through an assigned PIN number, the charges billed to the pay telephone can cause an avalanche of invalid charges. Once a PIN number is assigned for billing purposes to a pay telephone, the user typically can access the information service from other locations including his or her residence. Furthermore, the user can distribute the PIN number to friends and associates who can then use the PIN number to add to the mounting charges.

the IP to identify calls made from pay telephones and deny access to persons attempting to make information service calls from pay telephones. Implementation of this requirement will also prevent PTA and CAPA members, as well as pay telephone providers in other states, from being improperly billed potentially huge charges for information calls placed from their respective pay telephones.

In summary, the Pennsylvania Commenters appreciate the opportunity to renew the recommendations in our initial comments and address new issues raised by other interested parties in these reply comments in an attempt to implement effective consumer protections in this important area. The Pennsylvania Commenters strongly urge the Commission to address all of these issues in a comprehensive manner in order to achieve an effective and final resolution of the information services problem.

Respectfully submitted,

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

Alan Kohler
Alan Kohler
Maureen A. Scott
Assistant Counsels

Veronica A. Smith
Deputy Chief Counsel

John F. Povilaitis
Chief Counsel

P.O. Box 3265
Harrisburg, PA 17105-3265
717-783-2810

**CENTRAL ATLANTIC PAYPHONE
ASSOCIATION**

Susan M. Shanaman
Susan M. Shanaman, Esq.
21 North 4th Street
Harrisburg, PA 17101
717-236-2055

PENNSYLVANIA TELEPHONE ASSOCIATION

Francis Mangan
Francis Mangan, President
30 North Third Street
Harrisburg, PA 17101
717-238-8311

**PENNSYLVANIA OFFICE OF CONSUMER
ADVOCATE**

Philip F. McClelland
Philip F. McClelland
Mary C. Kenney
Assistant Consumer Advocates
Irwin A. Popowsky, Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
717-783-5048

DATED: October 28, 1994